STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 24, 2006
v	No. 267585 Isabella Circuit Court
JOHN CARL JOHNSTON, Defendant-Appellant.	LC No. 05-000021-FH

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of delivery/manufacture of marijuana, MCL 333.7401(2)(d)(iii). We affirm.

Defendant argues that the trial court reversibly erred in denying his motion to suppress evidence of marijuana plants illegally obtained from his property after police officers observed the plants during a helicopter flyover. Defendant claims that this search did not fall under one of the recognized exceptions to the warrant requirement for searches and seizures and that the evidence was obtained from within the curtilage of his home.

We review for clear error a trial court's findings of fact regarding a motion to suppress evidence. *People v Echavarria*, 233 Mich App 356, 366; 592 NW2d 737 (1999). However, we review de novo the trial court's ultimate decision regarding a motion to suppress. *Id.*

The right to be free from unreasonable searches and seizures is guaranteed by both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, art 1, § 11; *People v Jenkins*, 472 Mich 26, 31; 691 NW2d 759 (2005). Searches or seizures conducted without a warrant are unreasonable per se, subject to several specifically established and well-delineated exceptions. *People v Borchard-Ruhland*, 460 Mich 278, 293-294; 597 NW2d 1 (1999). Generally, a search conducted without a warrant is unreasonable unless there exist both probable cause and a circumstance establishing an exception to the warrant requirement. *People v Mayes (After Remand)*, 202 Mich App 181, 184; 508 NW2d 161 (1993). When a search is conducted without a warrant, the prosecutor bears the burden of showing that a search was justified by a recognized exception to the warrant requirement. *Id.* Here, the prosecutor maintained that the search and seizure was justified by the open fields exception to the warrant requirement. See *People v Mackey*, 121 Mich App 748, 755-756; 329 NW2d 476 (1982).

Generally, if evidence is unconstitutionally seized, it must be excluded from trial. *People v Goldston*, 470 Mich 523, 528-529; 682 NW2d 479 (2004). However, illegally seized drugs are admissible if seized outside the curtilage of any dwelling house. *Goldston*, *supra* at 537-538; *People v Carter*, 250 Mich App 510, 519; 655 NW2d 236 (2002). Four factors should be considered in determining whether an area lies within the curtilage of the home: the proximity of the area claimed to be curtilage to the home, whether the area is included within an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by. *United States v Dunn*, 480 US 294, 301; 107 S Ct 1134, 94 L Ed 2d 326 (1987).

The *Dunn* factors serve as a way to distinguish where curtilage ends and open fields begin. The area in which marijuana plants were found lies 161 feet from defendant's residence, and appears to have been used as a dumping ground. Another plant was found in an area more than 200 feet from the residence. There are fences along the border with two roads adjoining the property, but there exist no interior fences enclosing the residence or the area in question. Contrary to defendant's assertion, the record contains testimony that the plants were visible from the adjoining roads, and that defendant had done nothing to prevent the plain observation of the plants by those passing by. It is clear that the areas in question do not fall within the curtilage of defendant's home. Therefore, the search and seizure on defendant's property was of open fields, and the trial court properly denied defendant's motion to suppress.

We affirm.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens